

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

TRACY ALLEN,

Plaintiff,

v.

PRIME INSURANCE COMPANY;  
NUNEZ TRUCKING LOGISTICS; and  
JUAN NUNEZ-JAVIER,

Defendants.

**CONSENT MOTION AND AGREEMENT FOR DISMISSAL OF  
UNDERINSURED MOTORIST INSURANCE CARRIER WITHOUT  
PREJUDICE**

COMES NOW Tracy Allen, Plaintiff in the above-captioned action, and InsureMax Insurance Company, an alleged underinsured motorist insurance carrier under O.C.G.A. §33-7-11, and, by and through their respective undersigned counsel of record, enter into this consent motion and agreement and move the Court to dismiss InsureMax Insurance Company from this action without prejudice for the consideration hereinafter set forth:

1.

InsureMax Insurance Company has been properly served as Plaintiff's alleged uninsured or underinsured motorist insurance carrier in accordance with O.C.G.A. § 33-7-11(d) and Georgia Law.

2.

InsureMax Insurance Company has requested that it be dismissed from this action without prejudice; and under the authority of *Yarbrough v Dickerson*, 183 Ga. App. 489, 359 S.E.2d 235 (1987), Plaintiffs hereby agree and consent to a dismissal of InsureMax Insurance Company from this action without prejudice upon the following conditions:

- (a) The applicable statute of limitations shall be tolled, and in the event the named defendants subsequently becomes uninsured or underinsured, Plaintiff, without leave of Court, may re-serve InsureMax Insurance Company by a separate amendment to Plaintiff's Complaint, and the undersigned counsel for InsureMax Insurance Company or any member of his/her law firm will timely accept and acknowledge due and legal service of Plaintiff's Complaint, as amended.
- (b) In the event that InsureMax Insurance Company, as Plaintiff's alleged uninsured or underinsured motorist insurance carrier, is later re-served with such amendment to Plaintiff's Complaint in the manner as specified hereinabove InsureMax Insurance Company shall be afforded no less than ninety (90) days before trial is requested or scheduled in which to complete discovery, conduct its investigation, and prepare for trial.

(c) In the event that InsureMax Insurance Company, as Plaintiff's alleged uninsured or underinsured motorist insurance carrier, is later re-served with such amendment to Plaintiff's Complaint in the manner as specified hereinabove, InsureMax Insurance Company shall be afforded the usual response period under the Georgia Civil Practice Act in which to file its answer, defensive pleadings, and defensive motions, including any defenses or motions relative to uninsured motorist or underinsured motorist insurance coverage (other than defenses pertaining to the applicable statute of, limitations and notice under O.C. G.A. § 33-7-11. (Which are waived as hereinbelow set forth).

(d) InsureMax Insurance Company hereby agrees to waive and does hereby waive any affirmative defense of the applicable statute of limitations and agrees to waive and does hereby waive the defense of statutory notice under O.C.G.A. § 33-7-11(d), which may otherwise be available to it in the event it is later re-served as Plaintiffs uninsured or underinsured motorist insurance carrier in this action in the manner specified hereinabove.

3.

The parties hereto hereby request that the Court enter an Order in this action, granting the within and foregoing consent motion upon the terms and conditions expressed herein.

Dated: 1<sup>st</sup> day of November, 2022.

Respectfully submitted,  
**TRUCK WRECK JUSTICE, PLLC**

**BY: /s/ Danny R. Ellis**  
**DANNY R. ELLIS, BPR #924074**  
**ATTORNEY FOR PLAINTIFF**  
1419 Market Street  
Chattanooga, Tennessee 37402  
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**STRICKLAND & SCHWARTZ, LLC**

**By: /s/ Michael J. Moore**  
MICHAEL J. MOORE  
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*Attorney for InsureMax Insurance  
Company*  
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TRACY ALLEN,

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PRIME INSURANCE COMPANY;  
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Defendants.

CIVIL ACTION  
FILE NO.: 4:22-CV-00215-WMR

**ORDER**

It appearing to the Court that Plaintiff Tracy Allen, and Plaintiff's uninsured or underinsured motorist insurance carrier, InsureMax Insurance Company, have entered into a Consent Motion and Agreement for the dismissal of InsureMax Insurance Company from this action without prejudice upon certain specified terms and conditions as set forth in the written Consent Motion and Agreement for Dismissal of Uninsured Motorist Insurance Carrier Without Prejudice, which is on file in this action; and, the Court having duly considered said Consent Motion and Agreement;

IT IS HEREBY CONSIDERED, ORDERED, AND ADJUDGED that said consent motion to dismiss InsureMax Insurance Company from this action without prejudice is hereby granted and sustained, and InsureMax Insurance Company is

hereby dismissed from this action without prejudice and expressly conditioned upon the terms and conditions set forth in the written Consent Motion and Agreement between Plaintiff Tracy Allen and InsureMax Insurance Company.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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WILLIAM M. RAY, II  
UNITED STATES DISTRICT JUDGE

ORDER PREPARED BY:

**STRICKLAND & SCHWARTZ, LLC**

By: /s/ Michael J. Moore  
**Michael J. Moore**  
**Georgia Bar No. 542419**  
**Attorney for InsureMax Insurance Company**  
2200 Century Parkway, N.E.  
Suite 1050  
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Phone: (404) 296-6692

CONSENTED TO BY:

**TRUCK WRECK JUSTICE, PLLC**

BY: /s/ Danny R. Ellis  
**DANNY R. ELLIS, BPR #924074**  
**ATTORNEY FOR PLAINTIFF**  
1419 Market Street  
Chattanooga, Tennessee 37402  
Telephone: (423) 265-2020

**CERTIFICATE OF SERVICE**

I certify that I filed the within and foregoing CONSENT MOTION AND AGREEMENT FOR DISMISSAL OF UNDERINSURED MOTORIST INSURANCE CARRIER WITHOUT PREJUDICE Using the CM/ECF System for the federal District Court for the Northern District of Georgia. A true and correct copy of the same was served via electronic mail as follows:

Danny R. Ellis  
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3344 Peachtree Road NE  
Atlanta, Georgia 30326

Dated: 1<sup>st</sup> day of November, 2022.

Respectfully submitted,  
**STRICKLAND & SCHWARTZ, LLC**  
By: /s/ Michael J. Moore  
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Georgia Bar No. 542419  
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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

**STRICKLAND & SCHWARTZ, LLC**

**By: /s/ Michael J. Moore**

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